



GOBERNADORA DE PUERTO RICO
WANDA VÁZQUEZ GARCED

April 27, 2020

The Honorable Charles E. Grassley
Chairman, Committee on Finance
United States Senate
219 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Grassley:

We acknowledge receipt of your letter dated April 20, 2020, in which you express the concerns of the Senate Committee on Finance (the "Committee") regarding Puerto Rico's use of federal relief funding to address Puerto Rico's recovery from recent natural disasters and our response to the ongoing COVID-19 public health emergency.

The Government of Puerto Rico (the "Government") is acutely aware of the severe hardships the people of Puerto Rico have endured in recent years. Since Congress passed the *Puerto Rico Oversight, Management, and Economic Stability Act* ("PROMESA") in 2016, Puerto Rico has experienced two of the most damaging hurricanes in U.S. history, the strongest earthquakes recorded on Island in over a century, and now the unprecedented uncertainty of the global COVID-19 pandemic that has directly threatened the health and livelihood of all U.S. citizens. The combination of the recent natural disasters and the current public health crisis has dramatically exacerbated an already decades-long, Island-wide recession that has led to significant population loss. In the midst of these challenges, the Government is the subject of the largest debt restructuring proceeding in U.S. history and has had to navigate through the severe austerity measures required under fiscal plans certified by the Financial Oversight and Management Board for Puerto Rico (the "Oversight Board") pursuant to PROMESA. There is no doubt that all of these situations exacerbate the struggles of the U.S. citizens in Puerto Rico due to the longstanding inequalities that result from our territorial status. The people of Puerto Rico have been hurting for a very long time.

As you rightly note, "the federal government has significantly increased funding for Puerto Rico's health system, including Medicare and Medicaid funding, as well as funding for measures to confront COVID-19." I would be remiss if I did not acknowledge that the people of Puerto Rico are truly grateful for the federal government's financial support in these areas.

However, we must also acknowledge that a fundamental limitation for Puerto Rico as it seeks to address its multiple overlapping crises (economic, fiscal, demographic, political exigencies as well as natural disasters and pandemics) is that its territorial status allows for structural inequalities between Puerto Rico and the states.

As you are aware, given Puerto Rico's territorial status, Congress has the right to disparately treat U.S. citizens on the Island under multiple federal laws, programs, and other policies (such as Medicaid, Medicare, nutritional assistance, child tax credit, and the earned income tax credit) – and Congress does in fact do so.¹ These inequitable policies lead to an overall quality of life in Puerto Rico that is below the standard in the states in multiple respects. This disparate quality of life is the primary reason for Puerto Rico's ongoing population loss, which is detrimental to Puerto Rico's tax base, labor force, consumer demand, debt repayment capacity, and overall prospects for economic growth. Although it is true that the federal government has increased its financial support for U.S. citizens in Puerto Rico in recent years, the fact remains that U.S. citizens living in Puerto Rico are still not receiving equal treatment under the law as compared to those living in the states.

Beyond your reference to the federal government's increased funding for Puerto Rico's health system, the balance of your letter is unfortunate. It contains several misstatements, mischaracterizations and inaccuracies that do not accurately reflect the manner in which this administration has governed and taken critical measures to assure utmost compliance with the rule of law. In addition, your comments seem to have been inspired by individuals with a personal agenda who seek to tarnish Puerto Rico's reputation. Finally, it is particularly troubling that your allegations come at a time of great distress in Puerto Rico and the world, when precious time and resources should be used to address our collective humanitarian crisis.

Rest assured of two things. First, in the face of the unprecedented global crisis brought on by COVID-19, this administration has been laser focused on preserving the health and safety of the U.S. citizens of Puerto Rico and assuring that we respond to this unparalleled challenge swiftly and effectively. This administration took deliberate and assertive actions to protect the Island's U.S. citizens by implementing the first—and at the time most comprehensive— stay at home and curfew policies, which halted the tide of the novel coronavirus and saved hundreds if not thousands of lives. Since the first Executive Order implementing these policies was issued on March 15, 2020, Puerto Rico has recorded approximately 1,389 COVID-19 cases and 84 COVID-

¹ On December 20, 2016, the Congressional Task Force on Economic Growth in Puerto Rico (the "Task Force") identified several instances where Puerto Rico's citizens are subject to unequal treatment under federal programs. As noted in the Task Force report, federal law requires employers and employees in Puerto Rico to pay all federal payroll taxes, which fund Medicare, among other federal programs. However, Puerto Rico is the only U.S. jurisdiction where Medicare beneficiaries are required to take the extra step of opting into Medicare Part B coverage. The lack of an automatic Part B enrollment process in Puerto Rico has resulted in a disproportionate number of Medicare beneficiaries in Puerto Rico paying the lifetime late-enrollment penalty for no apparent reason. In addition, the unequal treatment is also evident in federal tax policy towards families in Puerto Rico. Under current federal law, families in Puerto Rico with one or two children are generally not eligible for federal child tax credits. By not allowing families in Puerto Rico to claim the additional child tax credit against their federal payroll taxes, as the Task Force recommends, approximately 355,000 families with about 404,000 children, miss out on an average credit of \$770.

19 related deaths in a population of over 3.2 million. Second, this administration fully supports and shares your unwavering commitment to ensuring that state and federal government take all responsible measures to fairly and transparently implement their procurement and contracting policies. Since our first day in office, this administration has been working diligently in this regard.

In an unprecedented act, this administration has enforced a full lockdown of the Island. This lockdown includes government agencies, schools, shopping malls, theaters, casinos, gyms, recreation parks, bars, clubs, and private business until May 3, 2020. However, businesses related to the distribution of supply food chain, medical supplies and equipment, gas, financial and banking institutions, and elderly care centers are excluded and remain open. The Island is under a strict curfew from 7:00 pm to 5:00 am. Citizens are permitted to be out to receive healthcare services and buy necessary food supplies before 7:00 pm, exempted from the mandatory lockdown are those providing essential services. These measures have been recognized by the National Governors Association,² and by the media.³

In a historic measure, the Federal Aviation Administration (FAA) approved this administration's request to redirect commercial air traffic to the Luis Muñoz Marín International Airport in San Juan. This measure is fundamental given the Island's current situation and the reputation of Puerto Rico as a tourism destination. Additionally, we were the first in the nation to activate the Puerto Rico National Guard to impose the first 100% passenger health screening at the airports. Furthermore, every individual must submit to fourteen (14) days of mandatory quarantine upon arrival to the island. The Governor also announced the closure of ports to all cruise ships to the Island. These measures were executed in order to protect the 3.2 million U.S. citizens of Puerto Rico, prioritizing the health and safety of the people of Puerto Rico above all else.

In light of the above, I take no pleasure in having to respond to misinformation peddled by secondary sources who do not have the best interests of the U.S. citizens of Puerto Rico in mind and instead seek to push their own agendas. As President Donald J. Trump recently said in his March 11, 2020, address to the nation regarding his administration's response to the coronavirus, "[w]e must put politics aside, stop the partisanship and unify together as one nation and one family." This is a time to come together and harness our collective efforts to defeat a common invisible enemy – we must put the health and safety of U.S. citizens first.

² See, "What Steps Have States Taken to Address Coronavirus?," National Governors Association (April 27, 2020) available at https://www.nga.org/wp-content/uploads/2020/04/CoronavirusStateActionsChart_27April2020.xlsx (last visited on April 27, 2020). See also, "State/Territorial Resource Pages and Other Select State Actions: Puerto Rico," National Governors Association (April 27, 2020) available at <https://www.nga.org/coronavirus/#glance> (last visited on April 27, 2020).

³ See, "Coronavirus vs. Governors: Ranking the Best and Worst State Leaders," *Politico* (April 1, 2020) available at <https://www.politico.com/news/magazine/2020/04/01/coronavirus-state-governors-best-worst-covid-19-159945> (last visited on April 27, 2020) Recognizing Governor Wanda Vázquez-Garced as one of the best six governors in the Nation because of the firm measures taken to address Covid-19.

In the spirit of cooperation and for the good of the U.S. citizens of Puerto Rico, I have taken the time to address the concerns raised by the Committee regarding the Government's contract procurement process for the use of federal funds to combat COVID-19.

A. Accountability, Transparency, and Ethical Compliance

Your letter alleges that Puerto Rico has engaged in widespread “hoarding and politically-based allocations” of federal relief funds. This statement is patently false. This administration has doggedly addressed any issues related to irregularities in the use of federal funds and diligently ensured that relief is utilized for the maximum benefit of the people of Puerto Rico. Since becoming Governor in August 2019, I have issued a series of executive orders designed to combat corruption in government contracting and restore Puerto Rico's credibility with the federal government.⁴ In fact, after reviewing the Government's recovery operations in February 2020, Coast Guard Admiral Peter J. Brown—the Trump administration's liaison to the Government for natural disaster recovery efforts—reported that Puerto Rico's “reputation seems to lag the reality” because the Government has implemented “very strong internal control mechanisms to counter any attempts at corruption or diversion of funds.”⁵ Admiral Brown further indicated that, after reporting his findings to President Trump, he hopes the administration will be convinced that federal money is being spent wisely in Puerto Rico and that the federal and Puerto Rico government establish a new atmosphere of cooperation and trust. In fact, even before this crisis, the Trump Administration committed over a dozen departments and agencies, thousands of federal employees and billions of taxpayer dollars toward the recovery and resilience of Puerto Rico.⁶ Your letter undermines these efforts by spreading unfounded allegations that taint Puerto Rico's reputation. The truth is that the only pending criminal case for corruption related to the allocation of Puerto Rico federal emergency relief funds involves federal administrators at Federal Emergency Management Agency (FEMA), not Puerto Rico officials.⁷

This administration's commitment to justice, transparency, and the highest ethical standards should come as no surprise. I have dedicated my entire professional career to public service and, specifically, to the pursuit of justice. For more than 20 years, I served as a prosecutor for the Puerto Rico Department of Justice, and prior to becoming Governor, I was the Secretary of Justice of Puerto Rico. A firm proponent of the rule of law, I have brought my extensive legal

⁴ See, OE 2019-047, OE 2020-09, OE 2019-62, and OE 2020-16.

⁵ “Federal Disaster Liaison Brown Says Pace of Recovery Has ‘Accelerated Dramatically,’ Predicts Trump Will Be Convinced Federal Resources Are Being Spent Wisely in Puerto Rico,” *Reorg Research* (Feb. 26, 2020), available at www.reorg.com (last visited Apr. 21, 2020).

⁶ See, “Joint Statement by Rear Admiral Peter J. Brown, White House Special Representative for Puerto Rico Disaster Recovery; Governor Wanda Vázquez-Garced (PR and Congresswoman Jennifer Gonzalez-Colon (PR).”

⁷ Former FEMA officials Ahsha Tribble and Jovanda Petterson face 15 counts of wire and disaster fraud, as well as conspiracy to commit fraud, in connection with the allocation of Puerto Rico's hurricane relief funds. See “FEMA official among those arrested in post-hurricane Puerto Rico fraud case,” *NBCNews.com* (Sept. 10, 2019), available at <https://www.nbcnews.com/news/latino/former-top-fema-official-among-those-arrested-post-hurricane-puerto-n1051966> (last visited Apr. 21, 2020).

experience to the Governor's office. Like you, I take very seriously the role of government in ensuring that taxpayer funds are spent in a transparent and effective manner free of political influence. This administration has expeditiously carried out the rules and procedures implemented to root out any injustice and corruption. I have had zero tolerance for corruption throughout my career and, as Governor, I have dismissed any official who has not faithfully carried out anti-corruption rules and regulations. My record on this issue as Governor speaks for itself.

Since assuming the position of Governor, this administration has maintained an atmosphere of openness with all sectors of the population, regardless of social background, political, and/or religious affiliation. This continues to hold true in dealing with the current pandemic. This administration distributed \$100 million in state funds to all 78 municipalities of the Island. You would be hard pressed to find any other Governor that has reached the level of direct communication with mayors, legislators, the federal government, and with the general citizenry, that has been achieved by this administration.

B. Continuity of Government Administration

Your letter also makes several unfounded claims that a "recent wave of resignations of key health officials" signals "continued instability in Puerto Rico's health-care administration." The better question though is whether there is proper continuity in the delivery of government services *despite* the resignations. As you know, the turnover of government workers is quite common and has frequently been documented.⁸ Voluntary resignations are a routine part of the business of government and do not necessarily indicate government instability or dysfunction. My administration is committed to employing the most talented and experienced people in each government agency and we have ensured that the delivery of services to the people of Puerto Rico has been uninterrupted despite personnel changes. Insinuating that the Government cannot function properly because of voluntary resignations without factual support of any impact on the delivery of services is irresponsible in this time of unprecedented crisis.

C. Procurement of Government Contracts

As stated above, the enforcement of proper government contract procurement processes is among the highest priorities of my administration and any alleged or disclosed irregularities have been and will continue to be subject to investigation and report. As you are surely aware, investigations and reports are currently underway with respect to the contracts with 313 LLC and Apex General Contractors mentioned in your letter.

⁸ See "Turnover Up as More Workers Quit the Federal Government," *FedSmith.com* (Mar. 22, 2018), available at <https://www.fedsmith.com/2018/03/22/turnover-workers-quit-federal-government/> (last visited Apr. 21, 2020) (stating that over 468,000 federal employees voluntarily resigned in 2017 alone, representing a turnover rate of 16.7%).

Many government entities have had to address the unintended consequences of fast-tracking government procurement processes in the midst of a crisis. Both the State of New Jersey and the City of New Orleans have had to respond to issues relating to proper oversight of government contracts and allegations of fraud related to the use of hurricane relief funds.⁹ The federal government has also been scrutinized for its procurement decisions.^{10 11} Allegations of government impropriety will always be made in times of crisis. I fully concur that any impropriety in connection with the procurement of government contracts cannot be tolerated and we have implemented a process to investigate and eliminate any wrongdoing in government procurements. However, making allegations of malfeasance based on speculation and without factual basis is unfair to any administration and suggests ulterior motives.

D. Disclosures to the Oversight Board

The Government received the letter from Natalie A. Jaresko, Executive Director of the Oversight Board, dated April 6, 2020. We have responded to her information requests and disclosed documents relevant to the rapid testing kit purchases referenced in your letter. This administration has also voluntarily agreed to provide copies of all government contracts requested pursuant to the Oversight Board's contract review policy, even though that policy is beyond the Oversight Board's scope of authority under PROMESA section 204(b)(2).¹² This

⁹ See "Feds investigate Christie's use of Sandy relief funds," *CNN.com* (January 13, 2014), available at <https://www.cnn.com/2014/01/13/politics/christie-feds-investigating-sandy-ads/index.html> (last visited Apr. 21, 2020); see also "Former Mayor of New Orleans Is Charged in Sweeping Corruption Case," *The New York Times* (January 18, 2013), available at <https://www.nytimes.com/2013/01/19/us/c-ray-nagin-former-mayor-of-new-orleans-indicted-on-corruption-charges.html> (last visited Apr. 21, 2020).

¹⁰ Just recently, the Trump administration awarded a \$55 million contract for N95 masks to a company—with no history of manufacturing or procuring medical equipment—that is charging over 600% of what the nation's largest manufacturer is charging FEMA per N95 mask. See *Washington Post*, April 15, 2020, "In coronavirus scramble for N95 masks, Trump administration pays premium to third-party vendors," at https://www.washingtonpost.com/national/coronavirus-trump-masks-contracts-prices/2020/04/15/9c186276-7f20-11ea-8de7-9fdff6d5d83e_story.html. Additionally, the Trump administration entered into a \$20.7 million contract to test a drug that showed no benefit to COVID-19 patients and resulted in more deaths among its users. See *Associated Press*, April 20, 2020, "More deaths, no benefit from malaria drug in VA virus study," at <https://apnews.com/a5077c7227b8eb8b0dc23423c0bbe2b2>; see also *Forbes*, April 15, 2020, "\$20 Million On An Unproven Malaria Drug, \$650 Million On A Coronavirus Cure: How Trump's Government Has Spent Over \$3 Billion Fighting COVID-19," at <https://www.forbes.com/sites/thomasbrewster/2020/04/15/20-million-on-an-unproven-malaria-drug-650-million-on-a-coronavirus-cure-how-trumps-government-has-spent-over-3-billion-fighting-covid-19/#689eadcd73ca>.

¹¹ See "U.S. Pays High Prices for Masks From Unproven Vendors in Coronavirus Fight," *WSJ.com* (April 23, 2020), available at <https://www.wsj.com/articles/u-s-pays-high-prices-for-masks-from-unproven-vendors-in-coronavirus-fight-11587218400> (last visited April 23, 2020) (stating that the federal government has placed more than \$110 million dollars at high prices from unproven vendors, and that average price for masks from vendors offering quick delivery is close to six times the list price.)

¹² PROMESA section 204(b)(2) authorizes the Oversight Board to require prior approval of "certain contracts" in order "to ensure such proposed contracts promote market competition and are not inconsistent with the approved Fiscal Plan." In addition, the "Sense of Congress" provision under Section 204(b)(3) explains that any Oversight Board contract review policy should be designed to: (i) make the government contracting process more effective; (ii) increase the public's faith in the contracting process; (iii) make appropriate use of the Oversight Board's time and resources; (iv) make the Commonwealth government a facilitator and not a competitor to private enterprise; and

administration has always sought to reduce the historically fractious relationship between the Government and the Oversight Board by facilitating informal discussions to achieve meaningful solutions for the people of Puerto Rico. Unfortunately, the Oversight Board continues to engage in unnecessary letter writing campaigns while creating delays and inefficiencies that could easily be resolved with a phone call. As recently as April 24, 2020 the Oversight Board sent me a letter providing recommendations to the Government on the use of \$2.2 Billion allocated to Puerto Rico through the Coronavirus Aid, Relief and Economic Security Act (CARES Act). While we appreciate the Oversight Board's initiative, their failure to even attempt to have a direct line of communication with this administration on such an important matter is surprising, even when the establishment of public policy is not within the scope of PROMESA. As with all recommendations received by this administration, and in accordance with its commitment to transparency, and the highest ethical standards, we will consider the Oversight Board's requests. We hope that in the future these types of letters, which often contain polemic comments with no basis in fact and appear to respond to public pressures, will no longer be necessary.

E. Supporting Documentation

In addition to the above, certain documentation related to the Committee's concerns into the Government's contract procurement process for the use of federal funds to combat COVID-19 are attached hereto. However, in our shared commitment to fully understand all matters concerning any pending investigation, it is essential that any investigation be completed and that all criminal, legal and/or administrative actions, if appropriate, be taken. We are providing all relevant information that does not compromise any pending investigation and, when the investigation is complete, we will share all information we are legally permitted to disclose.

* * *

My administration stands ready to continue productive engagement with the federal government and the Oversight Board to address our collective challenges posed by COVID-19. However, this administration will not stay silent, and will respond, in the face of false allegations that the Government has not acted in good faith or in a transparent manner.

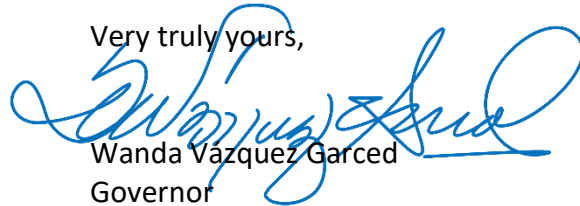
Finally, I thank you for this opportunity which has served to underscore the unquestionable resilience of our U.S. citizens in Puerto Rico, who despite the many recent challenges and the long-standing unequal treatment as a territory, have consistently paid the ultimate price in defense of our nation's freedom. Our U.S. citizens on the Island are proud,

(v) avoid creating any additional bureaucratic obstacles to efficient contracting. The Oversight Board's current contract review policy provides that "any contract or series of related contracts with an aggregate expected value of \$10 million or more" must receive prior Board review and approval. The Board has emphasized that this policy applies to all contracts in which the Commonwealth or a covered instrumentality is a counterparty, including those with the federal government, state governments, private parties, and nonprofit organizations. Because (i) section 204(b)(2) on its face states that the purpose of any Board review is to promote market competition and is limited to contracts between the Commonwealth and another Puerto Rico Government entity, and (ii) the Sense of Congress provision suggests that the purpose of the law is to promote private enterprise, the Oversight Board's policy requiring its approval of all contracts valued at more than \$10 million is overbroad and at odds with the Sense of Congress Provision. Among other things, the policy creates an unnecessary bureaucratic obstacle to contracting with private third parties for which an efficient market is available.

resilient, and their contributions to the nation are unquestionable. It is for this reason that I will continue to defend our U.S. citizens against reprehensible and unfounded attacks against their integrity and strive to put an end to the inequities that continue to afflict us.

If you have any questions, or require additional information, please do not hesitate to reach out to Jennifer M. Storipan, Executive Director of the Puerto Rico Federal Affairs Administration at 202-778-0710 or jstoripan@prfaa.pr.gov.

Very truly yours,



Wanda Vázquez Garced
Governor

Enclosures